

Stormwater Technical Committee Charge
June 10, 2008

Building on the work of the committee that began amending these regulations about two years ago, this TAC is charged with refining and developing where necessary, in coordination and cooperation with the Department of Conservation and Recreation (DCR) and the Environmental Protection Agency, amendments to the Virginia Soil and Water Conservation Board's (Board) Virginia Stormwater Management Program (VSMP) Permit Regulations (§§ 4 VAC 50-60-10 et seq.) to address:

- 1) Water quality and quantity criteria to be implemented associated with land disturbing activities;
- 2) Administrative functions that a qualifying local stormwater management program must contain to receive program authorization by the Board for administration of the VSMP or portions thereof;
- 3) Administrative procedures by which the Board makes its VSMP authorization determinations;
- 4) DCR program administration and oversight procedures; and
- 5) Revisions to the statewide stormwater permit fee schedule to a level sufficient to carry out the stormwater management program by localities and the Department.

Materials in TAC Packets

- 1) Agenda
- 2) Letter from the Secretary of Natural Resources to the TAC
- 3) TAC Member List
- 4) NOIRA - Local Programs
- 5) NOIRA - Fees
- 6) Virginia Stormwater Management Act
- 7) Virginia Stormwater Management Program (VSMP) Permit Regulations
- 8) Erosion and Sediment Control Regulations
- 9) Stormwater Part III (local program criteria regulations)
- 10) Stormwater Part XIII (fee regulations)
- 11) David Dowling's Presentation
- 12) Scott Crafton's Presentation
- 13) Fee Calculation Background Materials

DCR Website

Policy, Regulations and Public Comment Section

<http://www.dcr.virginia.gov/lawregs.shtml>

(minutes, agendas, presentations, handouts)

Framework of Stormwater Regulations

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP) PERMIT REGULATIONS
[4 VAC 50-60-10 et seq.]

Part I: Definitions, Purpose, and Applicability

Part II: Stormwater Management Program Technical Criteria

Part III: Local Programs

Part IV: Technical Criteria and Permit Application Requirements for State Projects

Part V: Reporting

Part VI: VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities

Part VII: VSMP Permit Applications

Part VIII: VSMP Permit Conditions

Part IX: Public Involvement

Part X: Transfer, Modification, Revocation and Reissuance, and Termination of VSMP Permits

Part XI: Enforcement of VSMP Permits

Part XII: Miscellaneous

Part XIII: Fees

Part XIV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities

Part XV: General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems

FORMS

**Stormwater Management Regulations Technical Advisory Committee (TAC) Agenda
June 10, 2008**

1. Opening Remarks
2. Delegation of charge to TAC
3. Presentation of Agenda
4. Introduction of the Facilitator
5. Guidelines for Discussion
6. TAC Member self-introduction and expectations
7. Background and NOIRA Review Presentation
8. Update on the Site Plan Design Charrettes
9. Update on Water Quantity Workgroup
10. Update on the BMP Handbook and Clearinghouse
11. Part III (Local program criteria)
12. Part XIII (Fee regulations)
13. Close and plan(s) for next meetings
 - Wednesday, July 16th
 - Thursday, August 14th
 - Tuesday, August 26th

Introduction of Department of Conservation and Recreation TAC Support and Logistics Staff

David Dowling – Policy, Planning and Budget Director
Eric Capps – E&S Control and Construction Permitting Manager
Scott Crafton – Stormwater Compliance Specialist
Michael Fletcher – Board and Constituent Services Liaison
Ryan Brown – Policy and Planning Assistant Director
Christine Watlington – Policy, Planning and Budget Analyst

Elizabeth Andrews - Assistant Attorney General

Introduction of the Facilitator

BARBARA L. HULBURT

WORK EXPERIENCE

1996 - present **DIRECTOR, FACILITATION & TRAINING**
 THE McCAMMON GROUP
 Bank of America Center
 1111 East Main Street, Suite 1700
 Richmond, Virginia 23219

April 1991-1996 **DIRECTOR; DEPARTMENT OF DISPUTE RESOLUTION**
 SERVICES
 OFFICE OF THE EXECUTIVE SECRETARY
 SUPREME COURT OF VIRGINIA

February 1989-
April 1991 **DEPUTY DIRECTOR**
 DEPARTMENT OF EMPLOYEE RELATIONS COUNSELORS

1988 -
January 1989 **SPECIAL ASSISTANT TO THE DIRECTOR**
 DEPARTMENT OF EMPLOYEE RELATIONS COUNSELORS

1985 - 1987 **SENIOR COUNSELOR**
 DEPARTMENT OF EMPLOYEE RELATIONS COUNSELORS

1982 - 1985 **ATTORNEY**
 ROGERS, JOSEPH, O'DONNELL & QUINN
 San Francisco, California

EDUCATION

1979-1982 **STANFORD LAW SCHOOL**, Stanford, California J.D., 1982
1974-1978 **SWARTHMORE COLLEGE**, Swarthmore, Pennsylvania B.A., Spanish

Background and NOIRA Review Presentation

History and Background

- As a result of the Governor’s Natural Resources Summit (April 2003 – Warner Administration) [and previous legislative studies], then Secretary of Natural Resources Tayloe Murphy requested the Director of DCR to convene an inter-agency taskforce to develop a plan and recommendations.
 - “The Secretary of Natural Resources will work with the DEQ, DCR, CBLAD, other agencies and the public to streamline the current storm water management process. A plan and recommendations are due to the Governor by October 1, 2003 that provides for improved water quality protection and evaluates storm water programs statewide.”
- Taskforce Goals:
 - Reduce public confusion
 - Clarify requirements and oversight
 - Create more even playing field
 - Coordinate inspections and findings
 - Improve enforcement authority
 - Eliminate overlap in local reporting requirements
 - Eliminate redundant agency program reviews
 - Reduce sediment impacts during construction and concentrated runoff, pollutants, channel erosion and flooding following construction.
 - Support sediment and phosphorus reduction goals under Chesapeake Bay tributary strategies and in Southern Rivers.
 - Support TMDL reductions in streams impaired by excess sediment and nutrients.
 - Better protect drinking water supplies.
- Key Taskforce Recommendations:
 1. Consolidate stormwater programs related to construction activities within DCR.
 2. Transfer oversight of municipal stormwater programs to DCR.
 3. Establish a more uniform statewide construction permitting program.
 4. Establish statewide stormwater requirements for projects with land disturbances of 1 acre or greater (with allowance for lower threshold in CBPA).
 5. Empower local governments to implement stormwater management programs.
 6. Develop a statewide permit fee system.
 7. Encourage low-impact approaches and better site designs.
 8. Consolidate SWM and ESC local program reviews.
 9. Increase role for the Virginia Soil and Water Conservation Board.
 10. Industrial stormwater permit program would remain at DEQ.
 11. Eliminate separate CBLAD requirements by incorporating them into a new statewide approach.
- Stormwater legislation was introduced and passed during the 2004 General Assembly Session – HB1177
 - Chief Patron:* Bryant, *House Patrons:* Abbitt, Albo, Amundson, Dillard, Morgan, Plum and Pollard; *Senate Patrons:* Hanger, Howell, Puckett, Quayle and Whipple

- Responsibility for stormwater regulation was consolidated from three separate state agencies (at the time) and four different citizen boards into DCR and the Virginia Soil and Water Conservation Board.
 - Department of Conservation and Recreation
 - Board of Conservation and Recreation
 - Virginia Soil and Water Conservation Board
 - Department of Environmental Quality
 - State Water Control Board
 - Chesapeake Bay Local Assistance Department
 - Chesapeake Bay Local Assistance Board

- Two step plan put in place:
 - 1st Step: Transfer to VSWCB & DCR
 - Transferred regulatory responsibility to Virginia Soil and Water Conservation Board on July 1, 2004.
 - Filled 15 new stormwater management positions
 - Amended current Virginia Stormwater Management regulations to reflect changes made in HB1177.
 - Received EPA authorization for DCR to administer federal portion.
 - Educated and involved stakeholders.

- Program Transfer to the Virginia Soil and Water Conservation Board was effective January 29, 2005.
 - 2nd Step: Transfer Stormwater Permitting Authority to Localities
 - Develop additional regulatory procedures for delegating responsibilities to localities and address water quality and quantity criteria.
 - Develop model ordinance.

NOTE: Localities with MS4 permits and localities within the CBPA Area must adopt a local stormwater management program *according to a schedule set by the Board but no sooner than 12 months and not more than 18 months following the effective date of the regulation that establishes local program criteria and delegation procedures.*

Localities not covered by a MS4 permit or not within the CBPA Area may elect to adopt a local stormwater management program. They shall inform the Board and the Department of their initial intention to seek delegation for the stormwater management program for land disturbing permits *within six months following the effective date of the regulation that establishes local program criteria and delegation procedures.*

Localities that adopt an approved local stormwater management program will operate the minimum program and issue the General Permit for Discharges of Stormwater from Construction Activities.

DCR will continue to issue the General Permit and operate a minimum program in localities not electing to adopt an approved stormwater management program.

Actions Leading Up to the Development of this TAC

It is this 2nd step that this TAC will continue to address. To do so, this TAC will continue and build upon the work begun several years ago to improve the Commonwealth's Stormwater Management Program.

- Board passed a motion authorizing the development of original NOIRA(s): July 21, 2005
- The NOIRAs were filed on: November 15, 2005
- On December 26, 2005 the two Notices of Intended Regulatory Action or NOIRAs related to Stormwater Management were published in the Virginia Register of Regulations by DCR on behalf of the Board. They were:
 - The Virginia Stormwater Management Program VSMP Permit Regulations NOIRA related to the development of local stormwater program criteria and permit delegation procedures; and
 - The Virginia Stormwater Management Program VSMP Permit Regulations NOIRA related to the changes in the statewide stormwater fee schedule.
- The public comment period for each of these NOIRAs opened on December 26, 2005 and closed 60 days later on February 24, 2006 at 5:00 p.m.
- Technical Advisory Committee was assembled.

Committee and Subcommittee Meetings

- The 1st meeting of the TAC: May 4, 2006 at the Science Museum of Virginia.
- The 2nd meeting of the TAC: May 18, 2006 at Department of Forestry.
- The 3rd meeting of the TAC: June 8, 2006 at Department of Forestry.
- The 4th meeting of the TAC: June 20, 2006 at the Science Museum of Virginia.
 - Part III subcommittee meeting: August 8, 2006 at DEQ regional office.
 - Part II subcommittee meeting: August 16, 2006.
- The 5th meeting of the TAC: August 21, 2006 at the Science Museum. (Part III)
 - Part XIII subcommittee meeting: August 29, 2006 at DEQ regional office.
 - Part II subcommittee meeting (2nd meeting): September 21, 2006 at DOF in New Kent.
- The 6th meeting of the TAC: October 3, 2006 at DOF in New Kent. (Tributary Strategies Presentation, Part II, Part III)
 - Part II technical discussion meeting; October 12 at DCR.
- The 7th meeting of the TAC: October 16, 2006.
- The 8th meeting of TAC: May 22, 2007.
- The 9th meeting of the TAC: June 14, 2007.
- The 10th meeting of the TAC: June 26, 2007.
- The 11th meeting of the TAC: June 29, 2007.
- The 12th meeting of the TAC: August 21, 2007.
- We held over 50 internal discussions and team drafting meetings.

Timetable for this Regulatory Action

SW – Local Program and Water Quality and Water Quantity Criteria (Parts I, II, and III)

- Board directed withdrawal of the NOIRA stage at their September 20, 2007 Board Meeting.
 - This recommendation was made to eliminate any question regarding the intent of the original NOIRA related to the Part II water quality and quantity technical criteria. ALSO TO:
 - Assemble a workgroup to develop water quantity language for the TAC's consideration.
 - Continue work on BMP Clearinghouse.
 - Continue work on Handbook Revisions.
 - Hold a series of regulation discussion and plan review meetings to address water quality calculations and spreadsheet approach.
 - Charrettes were held (in association with ASCE):
 - #1 Dorey Park, Richmond (Jan. 31st)
 - #2 Lakes and Watersheds Conference (March 11th)
 - #3 Environment VA (April 1st)
 - #4 Hampton Roads (April 29th)
 - #5 Northern VA (May 12th)
 - Work on fiscal analysis of proposed regulation.
- 60-day public comment period associated with the new NOIRA opened on the TownHall on February 18, 2008.
- NOIRA published in Register March 17, 2008 (previous NOIRA stage withdrawn).
- 60-day public comment period closed April 16, 2008.
- 29-member TAC was appointed.
- Hold TAC meetings during June - August 2008 [6/10, 7/16, 8/14, and 8/26].
- Take proposed regulation to the Board at the September 18, 2008 meeting. [BMP clearinghouse up; substantive parts of the handbook ready]
- Target October 15, 2008 for completion of Economic Analysis.
- Target November 1, 2008 to file regulation on TownHall.
- Review by the Administration - November 2008 thru April 2009.
 - Official OAG review – 3 days
 - 45 days DPB fiscal analysis review – Mid Dec. 2008
 - 14 days SNR – Jan. 1, 2009
 - No deadline Governor – April 1, 2009
 - Submit to Registrar – Early April 2009
 - Registrar publication – Late April 2009
- 60 days public comment – May - June 2009; public hearings; concurrent EPA review.
- Make Regulation refinements; EPA review – by September 1, 2009
- Take final regulation to the Board at the September 2009 meeting.
- Final Regulation Review by DPB, SNR, Governor – by November 15, 2009
- File with Registrar and publish for 30 days - Dec. 31, 2009.
- EPA final approval by Dec. 31, 2009.

SW – Permit Fees

September 18, 2008 – Proposed regulation to the Board

September 2009 – Final regulation to the Board

Tracks timeline above – Final regulation effective by December 31, 2009

NOIRA (Notice of Intended Regulatory Action) Overview

NOIRA 1: Amend Parts I, II, and III of the Virginia Stormwater Management Program Permit Regulations to address water quality and quantity and local stormwater management program criteria.

- Generally, the purpose of this action is to amend the Virginia Soil and Water Conservation Board's Virginia Stormwater Management Program (VSMP) Permit Regulations to:
 - establish criteria to protect the quality and manage the quantity of stormwater runoff to state waters,
 - criteria for the administration of a local stormwater management program,
 - processes and procedures for Board approval of a qualifying local program, and
 - local program oversight and implementation criteria for the Board and the Department.

- Specifically, the Virginia Soil and Water Conservation Board's expressed their intent to address changes related to the Board's Virginia Stormwater Management Program (VSMP) Permit Regulations including, but not limited to:
 - 1) Amendments, deletions, or additions to Part I (Definitions, Purpose, and Applicability)

 - 2) Amendments, deletions, or additions to Part II (Stormwater Management Program Technical Criteria) related to:
 - Development of water quality and quantity technical criteria, including but not limited to modifications to performance-based and technology-based standards for water quality and the inclusion of specific provisions addressing water quantity issues;
 - Determination of acceptable BMPs for necessary pollutant removals to address water quality;
 - Establishment of phosphorus and [/or] nitrogen load limits based on Tributary Strategies or other scientifically-based reduction strategies;
 - Use of low impact development [and better site design] strategies;
 - Development of revised flow-weighted mean concentrations for phosphorus and nitrogen related to site imperviousness values;
 - Development of strategies for onsite and offsite controls including comprehensive watershed plans or other practices and controls generally recognized as controlling stormwater quantity and quality;
 - Allowance for off-site controls financed through the use of pro-rata fees by localities; and
 - Development of procedures to address TMDL wasteload allocations.

 - 3) Amendments, deletions, or additions to Part III (Local Programs) related to local program criteria and Board processes and procedures for authorizing a locality or the Department to administer a local program, including but not limited to:
 - Establishment of technical criteria for a local program, administrative requirements, stormwater plan review and approval procedures including:
 - i. stormwater management facility right-of-access and maintenance agreement requirements,

- ii. VSMP General Permit coverage requirements,
 - iii. inspection procedures and requirements,
 - iv. program enforcement authorities including a Schedule of Civil Penalties,
 - v. hearing procedures,
 - vi. exceptions processes,
 - vii. stormwater management facility maintenance requirements, and
 - viii. reporting and record keeping requirements.
 - The modifications to Part III shall also include procedures for the review of local programs as well as procedures and requirements for local program authorization by the Board to administer a stormwater management program.
- 4) Other technical amendments, deletions, or additions. This may also include amendments, deletions, or additions to forms, documents, or other materials necessary to supplement the regulations.
 - 5) It is also the intent to revise the regulation, as needed, to improve the administration and implementation of the Virginia Stormwater Management Act (§10.1-603.1 et seq.) per the requirements set forth in the federal Clean Water Act and its attendant regulations.

NOIRA 2: Fee Modifications

- 6) Allow for changes in the statewide permit fee schedule to a level sufficient to cover the state and local costs associated with program implementation; and
 - 7) Allow for related changes as needed to improve the administration and implementation of the stormwater management fees.
- Later this meeting and in subsequent meetings we will thoroughly review the specific components of the key parts of the regulations and discuss issues and potential amendments associated with each.